IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 72-220

PHELPS DODGE CORPORATION,
Petitioner,

vs.

AFL-CIO JOINT NEGOTIATING COMMITTEE FOR PHELPS DODGE CORPORATION, ET AL.,
Respondents.

No. 72-359

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

AFL-CIO JOINT NEGOTIATING COMMITTEE FOR PHELPS DODGE, ET AL., AND PHELPS DODGE CORPORATION,
Respondents.

RESPONSE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA TO BRIEF IN OPPOSITION

MILTON A. SMITH,
General Counsel,

OTTO F. WENZLER,
Labor Relations Counsel,
Chamber of Commerce of the United States of America,
1615 H Street, N. W.,
Washington, D. C. 20006.

GERARD C. SMETANA,
925 South Homan Avenue,
Chicago, Illinois 60607.

LAWRENCE M. COHEN,
HERBERT M. BERMAN,
Ledecky, Fox and Grove,
111 West Washington Street,
Chicago, Illinois 60602,
Attorneys for the Chamber of Commerce of the United States of America

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The Chamber of Commerce of the United States of America, as *amicus curiae*, previously demonstrated that, as stated in the Board's petition (p. 12), "[t]he question whether unions, by the kind of tactics utilized here, may

expand the scope of collective bargaining beyond established bargaining units is an important issue in the administration of the Act." The Respondents, while acknowledging that this question is one of "great significance to the future of collective bargaining in the United States", nevertheless oppose certiorari on the sole ground that the court below did not reach that issue. Br. in Opp., pp. 1, 6. This assertion is based on several misconceptions which require a brief response.

1. The court below decided more than a mere factual dispute. It directly sanctioned the Board-disapproved device of enlarging unit bargaining by "conditioning settlement of negotiations [in one bargaining unit] . . . upon simultaneous and satisfactory settlement of contracts in other bargaining units." App., p. A-2. The court admittedly did not rule in its modified opinion—as the Board similarly had not—on the separate question of whether the Unions' demands involved mandatory or non-mandatory subjects of bargaining. Rather, the court concluded, regardless of the disposition of *that* issue, the effect of the Unions' "over-all strategy" and "parallel action" was permissible. App., pp. A-7, A-8. It is *this* decision which constitutes the fundamental disagreement between the Board and the court, and is the critical question which the instant petitions now present to this Court.

2. The decision below, notwithstanding the asserted variance accorded to its precise holding, has caused a severe dislocation in well established labor-management relations. See Bd. pet., pp. 12-13; Phelps Dodge pet., pp. 15-16; Chamber br., pp. 5-7. That fact is not disputed. The Court of Appeals has enunciated a rule which, if permitted to stand, will have wide-spread ramifications on the future course of collective bargaining in multi-unit companies throughout the nation. Such an issue clearly is "beyond the academic or the

episodic." *Rice* v. *Sioux City Cemetery*, 349 U. S. 70, 74. It is for this reason that, the Chamber again submits, the present case warrants the attention of this Court.

Respectfully submitted,

MILTON A. SMITH,
General Counsel,

OTTO F. WENZLER,
Labor Relations Counsel,
Chamber of Commerce of the
United States of America,
1615 H Street, N. W.,
Washington, D. C. 20006.

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